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March 20, 2017

SUBMITTED ELECTRONICALLY VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

Re: **Notice of *Ex Parte* Presentation**

WT Docket No. 16-319, *Bresnan Communications, LLC, Request for Waiver*

Dear Ms. Dortch:

On March 16, Eric Hagerson of T-Mobile USA, Inc. (“T-Mobile”) and I, along with our counsel, Russell Fox of Mintz Levin, held separate meetings with each of the following regarding the above-referenced matter: Rachael Bender, Acting Legal Advisor to Chairman Pai; Daudeline Meme, Legal Advisor to Commissioner Clyburn; and Erin McGrath, Legal Advisor to Commissioner O’Rielly. During the meetings, we urged the Commission to promptly dismiss the Application for Review (“AFR”) submitted in this proceeding by the Rural Wireless Association (“RWA”). We noted that the AFR is without merit and merely reiterates arguments correctly rejected by the Wireless Telecommunications Bureau (the “Bureau”). As the Commission’s records reflect, T-Mobile has consummated the underlying transaction in this proceeding. Finality is therefore critical because T-Mobile has already begun to expend significant resources to meet the aggressive performance requirements established by the Bureau, delivering much needed competition for wireless services to rural areas in Montana.

This Is a Review of a Routine Bureau Decision.

The AFR, and the *ex parte* letters that RWA has submitted, ask the Commission to review a routine Bureau decision. It is the Bureau’s practice to provide relief from performance requirements when waiver is warranted, as it is here.^{1/} RWA fails to show how the Bureau’s

^{1/} See, e.g., *In the Matter of AT&T Mobility Spectrum LLC, BellSouth Mobile Data, Inc., New Cingular Wireless PCS, LLC, and SBC Telecom, Inc., Petition for Limited Waiver of Interim Performance Requirement for 2.3 GHz WCS C and D Block Licenses*, Order, WT Docket No. 16-181 (rel. Jan. 18, 2017).

routine exercise of its discretion granting the waiver request is inappropriate and inconsistent with Commission precedent and its rules. In this case, the Bureau had the discretion to grant a waiver of Section 27.14(g)(1) of the rules (the “Acceleration Rule”) if doing so did not frustrate or disserve the underlying purpose of the rule and if grant of the waiver was in the public interest.^{2/} T-Mobile has demonstrated throughout this proceeding that granting the waiver request easily meets both elements of this test.

T-Mobile plainly satisfied the public interest component of the test by committing to an aggressive buildout schedule that would provide citizens of Montana with coverage using the 700 MHz spectrum T-Mobile purchased. As noted below, T-Mobile will provide service—at the precise level required by the rule—quicker than if the rule was enforced. It was therefore in the public interest for the Bureau to conclude that consumers would be better off if the waiver were granted than if it were not. In fact, T-Mobile has already satisfied one of its build out obligations, and it is on track to satisfy the remainder. It is puzzling that RWA could assert that the Bureau was wrong to rely on T-Mobile’s ability to perform, characterizing it as “speculative,”^{3/} in light of T-Mobile’s history of performance and success, and now the fact that T-Mobile has already met the first buildout requirement well in advance of the April 21, 2017 deadline. Additionally, T-Mobile recently opened its first store in Missoula, Montana and plans to open additional stores throughout the state, as it committed to do.

The Bureau also correctly found that waiver of the Acceleration Rule would not frustrate or disserve its underlying purpose.^{4/} RWA argues that the sole purpose of the Acceleration Rule is to prevent the warehousing of 700 MHz spectrum and that waiver of the rule frustrates that purpose.^{5/} But RWA’s premise is inaccurate. The purpose of the Acceleration Rule is not to punish licensees that do not adhere to the Commission’s performance requirements. Instead, the Acceleration Rule’s purpose is to promote the delivery of service to the public. This is exactly what T-Mobile committed to do and is doing already. And it is precisely what T-Mobile has done time and again with respect to its performance requirements.

Grant of the waiver cleared the path for significant benefits to consumers in the rural and tribal areas of Montana. While consumers did not have the benefit of the prior licensee’s satisfaction of the interim performance requirement, denial of the waiver request—which would merely postpone some uncertain future licensee’s ability to provide service—will not address that deficiency. The final performance requirements for 700 MHz systems obligates T-Mobile to cover 70% of the geographic area in each of the license areas by June 13, 2019.^{6/} T-Mobile will

^{2/} 47 CFR § 1.925(b)(3)(i); *see also* Letter from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, to Steve B. Sharkey, T-Mobile License LLC, DA 16-1429, WT Docket No. 16-319 (rel. Dec. 21, 2016) (“Waiver Letter”).

^{3/} Rural Wireless Association, Inc., Application for Review at 7, WT Docket No. 16-319 (filed Jan. 23, 2017).

^{4/} Letter from Caressa D. Bennet, General Counsel, Rural Wireless Association, to Marlene H. Dortch, Secretary, FCC, at 1, WT Docket No. 16-319 (filed Mar. 8 2017) (“RWA *ex parte* letter”).

^{5/} *Id.*

^{6/} Waiver Letter at 6.

exceed those requirements by covering 70% of the geographic area significantly earlier than June 21, 2019. While the Commission could have chosen to enforce the Acceleration Rule to demonstrate its willingness to punish licensees, as RWA suggests it should have, it took the better approach in this case of waiving the rule in order to ensure that service was provided to the public instead.

RWA also asserts that the Bureau's decision signals that the Bureau is not serious about enforcing the Commission's performance requirements.^{7/} RWA's argument, however, would strip the Bureau of its authority to waive rules based on the theory that exercise of that authority demonstrates a lack of commitment to enforce the rules. That approach is directly contrary to the plain meaning of the rule, which permits the Bureau to issue waivers, and to decades of precedent underscoring the importance of a waiver "safety valve" in instances where application of a rule would not serve the public interest. RWA's assertion that grant of a waiver in this instance would invite requests for similar waivers assumes that the Bureau will simply grant all waivers requested and not carefully review and consider the facts of each case. RWA provides no evidence of why that would be the case.

This Is Little More Than an Attempt to Inhibit Competition.

RWA argues that the Bureau should not have granted the waiver request because T-Mobile will not be the first carrier in many parts of the licensed areas.^{8/} That argument assumes there is no public interest in the Bureau facilitating the introduction of competition from an additional carrier. The opposite is true. T-Mobile's entry into the market will result in the provision of new competitive services. RWA's AFR would harm Montana consumers by removing a strong competitor and denying them the many benefits that competition brings. The Commission has previously found that T-Mobile is a disruptive competitive force and the AFR would prevent T-Mobile from being that competitive force.^{9/}

The fact that T-Mobile holds licenses for other spectrum in the rural and tribal areas where it has, through this transaction, acquired 700 MHz spectrum does not reduce the impact of T-Mobile entering the marketplace with 700 MHz spectrum.^{10/} 700 MHz spectrum, as the Commission has recognized, has propagation characteristics different than other spectrum bands and is particularly valuable for providing service to the rural areas covered by the affected licenses.^{11/} Without the 700 MHz spectrum that is the subject of this proceeding, it cannot be as effective a competitor.

^{7/} RWA *ex parte* letter at 1.

^{8/} *Id.*

^{9/} *In the Matter of Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, Order, WT Docket No. 11-65, 26 FCC Rcd 16184, para. 73 (2011) (acknowledging that the industry views T-Mobile as a maverick).

^{10/} RWA *ex parte* letter 2.

^{11/} *See Service Rules for 698-746, 747-762, and 777-792 MHz Bands*, Second Report and Order, WT Docket No. 06-150, 22 FCC Rcd 15289, para. 154 (2007).

RWA's Argument About the Benefits of Applying the Acceleration Rule Misses the Point.

RWA's core argument is that, instead of guaranteeing robust entry by a known competitive disruptor, the Bureau should have instead fallen back on the Acceleration Rule's re-licensing provisions in case some other unnamed entity or entities might later decide to bid on some portions of some of the licenses at issue.^{12/} It also argues that by not enforcing the Acceleration Rule, it has harmed "rural carriers that seek to access this spectrum."^{13/} But the purpose of the Acceleration Rule is not to favor some carriers over others, and, in any case, *no rural carriers have asserted that they would use this spectrum*. Based on the complete absence of rural carrier participation in this proceeding, and with zero indication of concrete interest in any portion of these licenses by any other carrier, the Bureau correctly found that the public would be better served by permitting T-Mobile to use the spectrum and meet aggressive performance requirements.

Even if there had been some indication of interest by another carrier in this proceeding, re-auctioning the affected spectrum would have taken time and would have delayed the service that T-Mobile committed to provide. Contrary to RWA's assertion, whether T-Mobile would be harmed by being required to participate in the re-auction process is beside the point. It is the public that would have been harmed by the delay in the introduction of competitive services caused by the re-auction. In finding that the public would be harmed by that delay, the Bureau made the correct decision.

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Pursuant to Section 1.1206(b)(2) of the Commission's rules, an electronic copy of this letter is being filed for inclusion in the above-referenced docket and a copy of this letter has been sent to Ms. Bender, Ms. Meme, and Ms. McGrath. Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,

/s/ John Hunter

Senior Director, Engineering and Technology
Policy

cc: (via e-mail)
Rachael Bender
Daudeline Meme
Erin McGrath

^{12/} RWA *ex parte* letter 2.

^{13/} *Id.* at 1.